

shingles of adjacent rows. It is respectfully submitted that patent of Bussey, Jr., et al. does not teach the construction of Applicant's spacer.

The Bussey, Jr., et al. patent shows an insulation barrier that is different from the claimed spacer. Specifically, the insulation barrier is 24 inches to 72 inches wide (column 4, lines 10-12) so that it can be efficiently wrapped around a building as shown in Figs. 1 and 2. One of ordinary skill in the building trades would readily appreciate that such a width is too great to rest upon a single row of conventional shingles on a roof. At the specified range of widths, the insulation barrier of Bussey, Jr., et al would overlap adjacent rows of shingles on all shingled roofs of which the Applicant is aware.

The Examiner recognizes that claim 4 is not met by Bussey Jr., et al. but, nevertheless, contends that: "It would have been obvious to on [sic] having ordinary skill inn [sic] the art at the time of the invention to modify Bussey, Jr. et al's [sic] spacer to show the spacer having a width of about 3 inches." The Examiner's relies on the statement by Bussey, Jr., et al. that density, thickness and width may be controlled in any suitable manner (column 5, lines 21-24); but this reliance is misplaced. Bussey, Jr. et al. are simply indicating that their barrier can be manufactured by any known method. They are not stating that their barrier can, or should be, made outside the range of tolerances clearly delineated elsewhere. Only the Applicant teaches a spacer width of about 3 inches; a width that would make sheathing a house per Bussey, Jr., et al. impractical if not impossible. One of ordinary skill in the art, then, would not seriously consider the modification of the barrier of Bussey, Jr. et al., as proposed by the Examiner.

Claim 5 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Smith (U.S. Patent No. 6,907,701) in view of Berger (U.S. Patent No. 4,446,665). It is said by the Examiner that Smith describes all of the applicants re-roofing method except the step of positioning a metal

panel atop first and second strips of resilient foam. The Applicant respectfully disagrees with this assessment.

Claim 5 requires that a first strip of resilient foam be positioned atop one row of asphalt shingles of a roof, and that a second strip of resilient foam be positioned atop another row of asphalt shingles, and that a corrugated metal panel be positioned *atop* the first and second strips of resilient foam, and that a penetrating fastener be driven through the corrugated metal panel. Smith, on the other hand, shows a metal panel 16 touching only one spacer 14 and fails to show a panel 16 positioned “*upon the top of*” (the dictionary definition of the term “atop” that the Applicant has adopted and has used consistently in his specification) two foam strips as required in claim 5. Thus, the method of claim 5 is different from that of Smith and provides enhanced support for a corrugated metal panel on a roof.

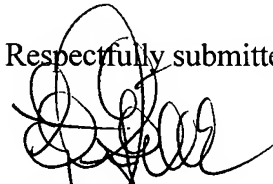
Berger shows a roof insulated by batts of unfaced fiberglass 43 which are not analogous to the Applicant’s strips of resilient foam in that extend at right angles to any rows of asphalt shingles found on a roof, i.e., they run up and down slope. A careful review of Berger shows that metal roofing panels 18 are supported by clips 22 above batts 43 and not upon the top of batts 43. Such a positioning of roofing panels 18 ensures that fiberglass batts 43 are not compressed and retain the maximum volume. (With fiberglass batts 43, any volume lost due to compression results in a reduction of the insulative qualities.) Thus, even if some teaching existed that would support the modification of Smith’s method in view of Berger, Berger does not teach the step of positioning of a metal panel upon the tops of strips of resilient foam as claimed by the Applicant.

Claim 7 was rejected under 35 U.S.C. § 103(a) as being anticipated by Smith in view of Vasquez (U.S. Patent No. 5,471,807). Here, the Examiner opines that fig. 1 of Smith shows a resilient spacer 14 positioned atop a row of shingles 22. No shingles 22 are shown in figure 1 of Smith, but fig. 3A shows spacers 14 held adjacent shingles 22 by risers 24. Again, Applicant notes

that he has adopted the dictionary definition of the term “atop,” which is “upon the top of,” to define the relationship of a spacer to a row of shingles. Since neither Smith nor Vasquez appear to illustrate this relationship, the rejection of claim 7 under 35 U.S.C. § 103(a) must fail and must be withdrawn.

Accordingly, it is respectfully submitted that this application is in condition to be passed to issue. If such is not determined to be the case, however, the Examiner is respectfully requested to call the undersigned attorney at the number given below in an effort to satisfactorily conclude the prosecution of this application.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Greiner', written over the printed name.

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